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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,528	03/29/2004	Walter Forrest Frantz	BO1 - 0017US	1916
60483	7590	06/19/2007		
LEE & HAYES, PLLC 421 W. RIVERSIDE AVE. SUITE 500 SPOKANE, WA 99201			EXAMINER KING, ANITA M	
			ART UNIT 3632	PAPER NUMBER
			MAIL DATE 06/19/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/811,528	<b>Applicant(s)</b> FRANTZ ET AL.	
	<b>Examiner</b> Anita M. King	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,10,13,15-17 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,10,13,15-17 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

This is the seventh office action for application number 10/811,528, Non-Protruding Seat Track Apparatus, filed on March 29, 2004.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4, 5, 10, 13, 16, 17, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,938,764 to McIntyre et al., hereinafter, McIntyre. McIntyre discloses a payload track (16) comprising: an elongated support including a first channel member (section to the left of element 22) having a first support surface (30), a second channel member (section to the right of element 22) approximately parallel to and spaced apart from the first channel member having a second support surface (30) approximately co-planar with the first support surface, the support surfaces being configured to engage directly or indirectly with a lower surface of a floor panel (32); an engagement member (section containing element 22) centrally disposed between the two channel members, wherein a first vertical side of the engagement member is attached to a first adjacent portion of the first channel member and a second vertical side of the engagement member is attached to the second adjacent portion of the second channel member, and the engagement member includes an approximately horizontal top surface (24) configured to be coupled to the payload assembly; wherein the engagement member and the top surface are at least one of flush with and recessed below the lower surface of the floor panel when the support surfaces are

Art Unit: 3632

engaged with the lower surface; wherein the engagement surface has an engagement slot disposed therein; wherein each of the first and second channel members includes a plurality of longitudinal sides; wherein each of the first and second channel members has a "C"-shaped section; wherein the top surface is co-planar with at least one of the lower surface of the floor panel and the support surfaces when the support surfaces are engaged with the lower surface; a payload member (20) having at least one rigid support member (18); and a floor assembly including the at least one floor panel.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over McIntyre in view of U.S. Patent 5,178,346 to Beroth. McIntyre discloses the claimed invention except for the limitation of the engagement slot having a plurality of alternating holes and lands. Beroth teaches a payload track (11) having first and second channel members, an engagement member centrally disposed between the channel members, the engagement member having an engagement slot (12), wherein the engagement slot has a plurality of alternating holes (14) and lands (15), and a fastener apparatus (10) being configured to cooperatively engage a payload assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the slot in McIntyre to have included the plurality of alternating holes and

lands as taught by Beroth for the purpose of providing a locking means for attaching the payload assembly to the track in a quick, safe, and secured fashion.

### ***Response to Arguments***

Applicant's arguments filed April 2, 2007 have been fully considered but they are not persuasive. The rejections advanced against the pending claims stand.

In response to the argument that McIntyre does not teach a track having an engagement member and the top surface are at least one of flush with and recessed below the lower surface of the floor panel when the support surfaces are engaged with the lower surface, this limitation has been interpreted as the top surface has to be either flush with the lower surface or recessed below the lower surface, meaning, McIntyre need only meet one of the specified limitations. If it is applicant's intent to claim that the top surface is at least both flush with the lower surface and recessed below the lower surface, than the subject matter should be amended as such.

The floor panel in McIntyre is element 32 combined with strips 46, the engagement member (section containing element 22) and the top surface (24) are at least one of flush with and recessed below the lower surface of the floor panel when the support surfaces are engaged with the lower surface. The support surfaces of the channel members are indirectly engaged with the lower surface of the floor panel via grid structure (36), bolt (48) and nut (50) and the top surface is recessed below the lower surface of the floor panel. Thus, the applicant's claimed invention is clearly met by the reference to McIntyre. Note if the floor panel (32) were extended over the top

surface of the engagement member in McIntyre, the top surface would also be flushed with the lower surface of the floor panel.

In response to applicant's argument that Beroth does not remedy the limitation of the top surface being at least one of flush with and recessed below the lower surface, Beroth was not combined with McIntyre to remedy this limitation and need not teach all the limitations of the claimed invention, Beroth is a secondary reference used to teach the limitation of a track having a plurality of alternating holes and lands.

### ***Conclusion***


**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Anita M. King  
Primary Examiner  
Art Unit 3632

June 10, 2007